

AN ACT concerning criminal law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Code of Criminal Procedure of 1963 is amended by changing Sections 115-7.3 and 115-10 as follows:

(725 ILCS 5/115-7.3)

Sec. 115-7.3. Evidence in certain cases.

(a) This Section applies to criminal cases in which:

(1) the defendant is accused of predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, child pornography, aggravated child pornography, or criminal transmission of HIV;

(2) the defendant is accused of battery, ~~or~~ aggravated battery, first degree murder, or second degree murder when the commission of the offense involves sexual penetration or sexual conduct as defined in Section 12-12 of the Criminal Code of 1961; or

(3) the defendant is tried or retried for any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child.

(b) If the defendant is accused of an offense set forth in paragraph (1) or (2) of subsection (a) or the defendant is tried or retried for any of the offenses set forth in paragraph (3) of subsection (a), evidence of the defendant's commission of another offense or offenses set forth in paragraph (1), (2), or (3) of subsection (a), or evidence to rebut that proof or an inference from that proof, may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant.

(c) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances.

(d) In a criminal case in which the prosecution intends to offer evidence under this Section, it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.

(e) In a criminal case in which evidence is offered under this Section, proof may be made by specific instances of conduct, testimony as to reputation, or testimony in the form

of an expert opinion, except that the prosecution may offer reputation testimony only after the opposing party has offered that testimony.

(f) In prosecutions for a violation of Section 10-2, 12-4, 12-13, 12-14, 12-14.1, 12-15, 12-16, or 18-5 of the Criminal Code of 1961, involving the involuntary delivery of a controlled substance to a victim, no inference may be made about the fact that a victim did not consent to a test for the presence of controlled substances.

(Source: P.A. 90-132, eff. 1-1-98; 90-735, eff. 8-11-98.)

(725 ILCS 5/115-10) (from Ch. 38, par. 115-10)

Sec. 115-10. Certain hearsay exceptions.

(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13, or a person who was a moderately, severely, or profoundly mentally retarded person as defined in this Code and in Section 2-10.1 of the Criminal Code of 1961 at the time the act was committed, including but not limited to prosecutions for violations of Sections 12-13 through 12-16 of the Criminal Code of 1961 and prosecutions for violations of Sections 10-1 (kidnapping), 10-2 (aggravated kidnapping), 10-3 (unlawful restraint), 10-3.1 (aggravated unlawful restraint), 10-4 (forcible detention), 10-5 (child abduction), 10-6 (harboring a runaway), 10-7 (aiding and abetting child abduction), ~~11-6,~~ 11-9 (public indecency), 11-11 (sexual relations within

families), ~~11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 11-20.1,~~ 11-21 (harmful material), 12-1 (assault), 12-2 (aggravated assault), 12-3 (battery), 12-3.2 (domestic battery), 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.7 (drug induced infliction of great bodily harm), 12-5 (reckless conduct), 12-6 (intimidation), 12-6.1 (compelling organization membership of persons), 12-7.1 (hate crime), 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-10 (tattooing body of minor), 12-11 (home invasion), 12-21.5 (child abandonment), 12-21.6 (endangering the life or health of a child) or ~~and~~ 12-32 (ritual mutilation) of the Criminal Code of 1961 or any sex offense as defined in subsection (B) of Section 2 of the Sex Offender Registration Act, the following evidence shall be admitted as an exception to the hearsay rule:

(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and

(2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.

(b) Such testimony shall only be admitted if:

(1) The court finds in a hearing conducted outside the

presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and

(2) The child or moderately, severely, or profoundly mentally retarded person either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement; and

(3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding.

(c) If a statement is admitted pursuant to this Section, the court shall instruct the jury that it is for the jury to determine the weight and credibility to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, or the intellectual capabilities of the moderately, severely, or profoundly mentally retarded person, the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.

(d) The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.

(e) Statements described in paragraphs (1) and (2) of subsection (a) shall not be excluded on the basis that they were obtained as a result of interviews conducted pursuant to a protocol adopted by a Child Advocacy Advisory Board as set forth in subsections (c), (d), and (e) of Section 3 of the Children's Advocacy Center Act or that an interviewer or witness to the interview was or is an employee, agent, or investigator of a State's Attorney's office.

(Source: P.A. 91-357, eff. 7-29-99; 92-434, eff. 1-1-02.)